fendant shows by a preponderance of evidence that at the time of the violation it was not intentional and resulted from a bona fide error notwithstanding the maintenance of reasonable procedures to assure compliance and avoidance of error."

ADMINISTRATION

SEC. 15. (a) Section 621(a) of the Fair Credit Reporting Act is amended—

(1) by redesignating paragraph (1) as paragraph (2) and inserting the following before such redesignated paragraph:

"(1) The Federal Trade Commission shall prescribe regulations to carry out the purposes of this title. Such regulations may contain such classifications, differentiations, and other provisions, and may provide for such adjustments and exceptions as in the judgment of the Commission are necessary or proper to effectuate the purposes of this title to prevent circumvention or evasion thereof, or to facilitate compliance therewith. Any reference to any requirement imposed under this title or any provisions thereof includes reference to the regulations of the Commission under this title or the provisions thereof in question.";

(2) by inserting after "documents," in paragraph (2) as redesignated the phrase "examination and production of consumer reports and consumer reporting agency files,".

(b) Section 604 of such Act is amended by striking out "A" and inserting in lieu thereof "Except as provided in section 621 (a)(2), a".

(c) Section 608 of such Act is amended by inserting after "604," the following: "and except as provided in section 621(a)(2),".

STATE LAWS

SEC. 16. Section 622 of the Fair Credit Reporting Act is amended by adding at the end thereof the following new sentence: "The Federal Trade Commission is authorized to determine whether such inconsistencies exist. The Commission may not determine that any State law is inconsistent with any provision of this chapter if the Commission determines that such law gives greater protection to the consumer."

EFFECTIVE DATE

SEC. 17. Section 609(d) of the Fair Credit Reporting Act, as added by this Act, shall become effective 60 days after the date of enactment.

By Mr. BAYH (for himself, Mr. TUNNEY, Mr. MATHIAS, and Mr. ABOUREZK):

S. 1841. A bill to protect the constitutional rights of citizens of the United States and to prevent unwarranted invasion of their privacy by prohibiting the use of the polygraph type equipment for certain purposes. Referred to the Committee on the Judiciary.

Mr. BAYH. Mr. President, I am today introducing, together with the distinguished chairman of the Subcommittee on Constitutional Rights, Mr. TUNNEY, Mr. MATHIAS, and Mr. ABOUREZK, a bill to bar the use of polygraphs, Psychological Stress Evaluators—PSE—and other mechanical or electrical devices used by the Federal Government or by employers engaged in interstate commerce. Strict limitations of the use of polygraphs have been considered by the Senate on a number of occasions in recent years. Our distinguished former colleague, Mr. Ervin, guided no fewer than five separate bills through the Senate which would have placed some limits on the use of polygraphs by the executive branch. Yet after almost a decade of effort, no legislation has been ultimately successful. I believe, Mr. President, that the Senate has given the issue perhaps more than adequate consideration and that the time is ripe for final action.

My colleague, the distinguished Congressman from New York, Mr. KOCH, had introduced a similar bill in the other body, and he reports the likelihood of favorable House action. I might also note, Mr. President, that no Member of the Congress has devoted more of his time and given more thorough study to the entire issue of privacy than has ED KOCH. He should, I believe, be congratulated for his leadership in this area.

Senator Ervin's efforts were successful in convincing the executive branch to voluntarily limit its use of lie detector tests. Under Civil Service Regulations issued in January 1972 the use of these devices was restricted to agencies having intelligence or counterintelligence responsibilities and upon written authorization by the Chairman of the Civil Service Commission. Yet in 1973, almost 7,000 such tests were authorized. This bill bans the use of lie detectors by any Federal agency without exception. I am willing, however, to listen to reasonable arguments as to the need for a very limited use in the intelligence field. The total number of such tests under the present regulations, however, suggests a serious abuse of the very limited exception that might be justified. Accordingly, until I am convinced that the scope of such an exception could be sufficiently restricted, I will propose a total ban.

It is not in the Federal Government, but rather in the commercial world where mass invasion of privacy is taking place by large-scale use of these devices. There are no reliable statistics on the number of lie detector tests given by private examiners for business purposes, but knowledgeable estimates have ranged from a low of 300,000 to a high of 500,000 per year. This bill would, therefore, bar any person engaged in interstate commerce from "permitting, requiring, or requesting" any employee or applicant to take a lie detector test, and it would enforce this prohibition with criminal sanctions.

I should emphasize, Mr. President, that the bill would not in any way impede law enforcement authorities from making use of the investigative tool which a polygraph provides if there is reason to believe that a crime has been committed.

I believe, Mr. President, that the record presented to the Senate over the past decade suggests three essential reasons which justify the legislation we introduce today. First, clear evidence exists as to the questionable reliability of the results of these tests. Second, an analysis of the judicial development of the constitutional right of privacy reveals that the use of lie detector tests poses serious problems under the first, fourth, and fifth amendments, all of which were cited by the Supreme Court in Griswold against Connecticut as constituting the "penumbra where privacy is protected from government intrusion". Third, and equally important to me, is the inherently offensive nature of the polygraph procedure. As to the first two of these three points, I ask unanimous consent to have printed in the RECORD at this point in my remarks an excellent staff study prepared by the Staff of the Constitutional Rights Subcommittee on the reliability and constitutionality of polygraphs.

There being no objective, the study was ordered to be printed in the RECORD, as follows:

THE POLYGRAPH TEST: RELIABILITY

The theory behind the polygraph procedure and its results involves physiological responses purportedly related to the act of lying. It is professed that lying causes conflict to arise within the individual subject. The conflict produces fear and anxiety which, in turn, produce physiological changes which the polygraph devices can measure and record. Thus, the assumption underlying the polygraph test is that a uniform relationship exists between an act of deception, certain specific emotions, and various bodily changes.[23]

A typical polygraph examination may contain several features. The subject to be investigated is usually ushered into a waiting room where it is hoped he will avail himself of the favorable polygraph literature left for his attention. His reactions to these readings are often observed by the secretary or receptionist and reported to the examiner prior to his encounter with the subject.[24] The purpose of this conditioning is that the person to be examined carry with him into the test a belief in the reliability, accuracy and even infallibility of the polygraph. Examiners maintain that it is important and helpful in obtaining good responses for an individual to be convinced that his lies will be detected, thus heightening his sensitivity to the questions and the likelihood of clear physiological changes.[25] The "spy" in the waiting room reports to the examiner the degree of skepticism or acceptance exhibited by the subject while reading the polygraph literature. In this way, it is claimed, the examiner can better understand and compensate for all types of recorded responses to his questions.

Still prior to his being connected to the machine, the subject is brought into the testing area, usually a room sparsely decorated and furnished to avoid the presence of outside distractions or stimuli. At this point, some polygraph operators may make use of "two-way" mirrors to further observe the individual's behavior.[26] Then, with the machine in view, the examiner typically conducts a preliminary interview which aids him in assessing the type of person he is dealing with, and in obtaining other knowledge he might deem helpful in his interpretation of the results of the polygraph test.[27] The general questions pertaining to the circumstances being investigated are typically gone over to familiarize the subject with them and to allow the operator the opportunity to alter them where he feels it is necessary to elicit clear, definite responses.[28] The pneumograph tube, measuring respiration, is then placed around the subject's chest, the blood pressure and pulse cuff around his upper arm, and electrodes, which record galvanic skin responses (the change in the electrical conducivity of the skin due to increased skin perspiration) are attached to his hands. The examiner then proceeds with the questioning as he sits behind his control desk watching and marking the recordings of these devices.

How reliable is this process in determining the veracity of an individual? A study conducted at the Massachusetts Institute of Technology concluded:

". . . There exists no public body of knowledge to support the enthusiastic claims of

Footnotes at end of article.

operators. There are no publications in reputable journals, no facts, no figures, tables, or graphs. In short, there is nothing to document the claims of accuracy or effectiveness except bald assertions.[30] "

Though studies and experiments to assess the polygraph's effectiveness have been done, even when interpreted favorably, their results seem far from convincing of the polygraph's reliability. In an experiment conducted for the Defense Department, subjects were tested to determine the effect of their faith in the polygraph on the ability of the examiners to detect their lies.[30] The study concluded that a belief in the machine's accuracy did aid the detection of responses under certain types of questioning,[31] but it is significant to note the figures derived for the accuracy of the examiners' interpretations: only 83 percent of the subjects were correctly classified as guilty or innocent in the paradigm used.[32]

Even a study conducted by a large, well-known polygraph firm, yielded results which, when scrutinized, are unsettling. The experiment was set up so that examiners worked independently and solely with the records of polygraph tests.[33] The analyses of the ten examiners, averaged, produced 87.75 percent accuracy in identifying guilty and innocent subjects.[34] The experimenters were quick to point out that the examiners involved in the project did not have the benefit of observing or interviewing the subject so as to "make allowances for a resentful or angry attitude, a condition which could cause an error in interpretation of polygraph records." [35] Further, when figures were calculated separately, experienced examiners achieved an accuracy of 91.4 percent, whereas the accuracy of inexperienced examiners was 79.1 percent.[36] The enthusiasm expressed by supporters of the polygraph for results such as these seems unfounded. Even an eight or nine percent fallibility figure is substantial, and there is admittedly a large degree of subjectivity in the examiner's estimation of the subject's state of mind. The fact that there are no uniform standards or qualifications which require a minimum level of competence for examiners cast their subjective evaluations into even greater doubt.

Polygraph promoters and examiners generally quote a 95 percent accuracy rate for the tests performed in actual, as opposed to experimental situations. They also hasten to add that most errors are made in attaching an innocent label to a guilty individual, a fact they apparently view as comforting. The proponents' statistics are based on test results checked against the future dispositions of the subjects: an admission of guilt, confession to a crime, or the judgment of a jury. Yet even these means of verification are not conclusive. Whether or not a person has lied can never be known beyond any doubt; the confession or jury verdict may, in fact, be false or wrong. The staff, in short, has found no independent means for confirming the results of actual polygraph examinations.[37]

There is an established probability theory, however, which purports to sustain the validity of polygraph results. The theory of conditional probability maintains that, unless a diagnositic instrument has been demonstrated to be completely infallible, the probability that it will be accurate in any one test depends upon the prevalence of the condition being diagnosed in the group being tested.[38] In a group of 1,000 subjects, supposing 25 to be liars, and with a 95 percent accuracy rate assumed for the polygraph, the conditional probability for the lie detector is that for every one true liar, or "employment risk," found, two people will be falsely classified as such.[39]

Another objection to the claims of reliability for the polygraph test centers around the meaning of the physiological responses recorded. In hearings held before the House Foreign Operations and Government Information Subcommittee, chaired by Representative John Moss, experts declared that, given a physiological response under the polygraph test procedure, any of three inferences could be made: either the subject was lying; or he was telling the truth but some emotional factor, such as anger or embarrassment, caused the reaction; or the response was generated by a neurotic pre-condition of the subject.[40] Other less frequent or obvious factors possibly affecting the machine-measured replies include extreme nervousness; physiological abnormalities, such as heart conditions, blood pressure problems, headaches and colds; deep psychological problems; the use of drugs and alcohol; ratigue; simple bodily movements; and even the subject's sex.[41] Thus, the fact that peculiar physiological responses may be caused by physiological factors unrelated to whether the subject is lying casts the validity of these tests into further disrepute.

Furthermore, are there mental activities besides deception that can cause the physical changes recorded by the polygraph? Psychiatric experts state that any situation or stimuli that produced feelings of frustration, surprise, pain, shame, or embarrassment could be responisble for such physiological responses.[42] In fact, humans do respond differently to emotional stresses. No one would claim the physical responses to different people would be the same even under similar stimuli.[43] Nor, for that matter, has there been any relationship proven between lying well as guilt, fear, or anxiety.[44]"

". . . people cannot go through life without some lying, and every individual builds up his own set of responses to the act. Lying can conceivably result in satisfaction, excitement, humor, boredom, sadness, hatred, as well as guilt, fear, and anxiety.[44]"

Negative polygraph result could be obtained because of feelings such as hostility, possessed unconsciously by a mentally-unbalanced subject.[45]

Are there other individual differences which could affect the polygraph? Studies conducted have shown that many individlual factors, including skin pigment, may affect the galvanic skin response, heartbeat, and respiratory response measured by the device.[46] In a study conducted for the Air Force to determine the role played by environmental stress in the ability to detect lies,[47] the experimenters unexpectedly discovered another potential problem area. They found that the galvanic skin reactivity of an individual was not predicated only upon environmental or situational circumstances producing increased perspiration and electrical conductivity of the skin. Instead, it appeared that these physical responses differed among individuals, as recorded by the polygraph, in a way not accounted for in the experimenters' predictions. Further investigation seemed to point to biological, racially attributable differences as the reason.[48]

A related problem inherent in the polygraph test pertains to questions of cultural differences. It is generally recognized that values and moralities—honesty and truth-are, in part, culturally acquired; a serious lie in one person's view could, based on a different personal experience and background, be, in another's eye, inconsequential.[49] This throws further suspicion on the validity of a technique which depends upon accepted notions of morality for its value.

If the public were aware of the fallibility of the polygraph, would its effectiveness decrease? An important feature of the examination procedure, as previously explained, is the attempt to convince the subject of the machine's accuracy. Thus, as one authority notes, "Were the machine regarded as capable of error, fear of detection would be reduced, and this lowering of fear would result in diminishing physiological response." [50] One polygraph study concluded that the more a guilty subject could control his own attitudes and answers, the greater the contamination he could produse in the polygraph results; an intelligent subject could often succeed in eluding detection.[51]

What is the examiner's influence in the polygraph procedure and results? Interpretation is the essence of the process, making lie detecting a highly subjective business. Judgments about the subject's attitude and personality, about the composition of questions, and regarding the meanings of the machine's recordings are all made by the examiner. The results presented are solely the assessment of an operator of the lines recorded on the graphs of his machine. The expertise requisite in making such interpretations raises several questions as to the reliability of polygraph reports. Familiarity with several medical specialties and an understanding of clinical and social psychology should be required and expected of examiners; yet, the curriculum should be required and expected of examiners; yet, the curriculum offered by a leading polygraph school, a program lauded by advocates as producing truly reputable examiners, amounts to a mere 244 hours of study with only 14 hours in psychology and 31 hours in "medical aspects." [52] Even the mere possession of an academic degree, unless an advanced one in physiology or psychology, should not be enough qualification.[53] Clearly, the level of most examiner competence across the country, when the finest of the profession receive the minimal training noted here, falls far short of these criteria.

Another consideration is the possibility that examiner bias will be injected into the test. There are examiners who sympathize with the employer who is seeking protection from thieving employees,[54] who believe that most of the people who resist the tests are trying to hide something incriminating,[55] and who maintain that the polygraph is an effective instrument for bringing out a person's compulsion to confess.[56] The chance for an unprejudiced examination and interpretation, with underlying examiner attitudes such as these, greatly diminishes.

With this number of potential trouble-spots involved, doubt must be cast upon the objectivity, accuracy, and reliability of the polygraph test. It has been noted that the acceptance of the machine is the product of circular logic: belief in the device induces confession, and the rate of confessions creates faith in the polygraph's effectiveness.[57] In reality:

"The polygraph technique only provides measures of various autonomic responses. The stimuli that elicit these responses, the intervening variables (constitutional predisposition, past learning, conscious and unconscious motivation, etc.) and the interpretations made of the resulting graphs are highly complex and are inferences made from more or less incomplete data." [58]

THE POLYGRAPH TEST: CONSTITUTIONALITY

The courts have been embroiled in the polygraph issue for a half-century, contending with questions of reliability and, in related contexts, with the deeper constitutional implications for individual rights. Reservations have been expressed again and again concerning the admissibility of polygraph results as evidence: (1) the jury's role would be undermined by a test purportedly as related to the determination of truth as the polygraph; (2) the test data offered by a defendant couldn't be cross-examined; (3) the problems of assuring that consent to be examined has been completely uncoerced are great; (4) with the polygraph usable as evidence, the presumption of innocence would certainly be damaged by a refusal to take the test; and (5) a polygraph exam could violate the privilege against self-incrimination,[59] as well as other constitutional provisions. These

Footnotes at end of article.

last considerations and concerns are also relevant to the use of polygraphs in employment, where this method of investigation threatens to violate the right to privacy possessed by every individual.

The right to privacy is not one of the specific guarantees enumerated in the Bill of Rights. Yet it has been recognized as an implicit right, intended by the Constitution and its framers, a result of the entwinement of express constitutional mandates and necessary to the preservation and viability of these liberties.

In particular, the provisions of the First Amendment have been among those deemed related to the right to privacy. "The right of freedom of speech and press includes . . . freedom of thought . . . Without those peripheral rights the specific rights would be less secure." [60] Freedom in our thoughts and beliefs has been long acknowledged as being within the First Amendment freedom of speech. In *Palko* v. *Connecticut* [61] this point was clearly stated:

"Of that freedom [of thought, and speech] one may say that it is the matrix, the indispensable condition, of nearly every other form of freedom. With rare aberrations a pervasive recognition of that truth can be traced in our history, political and legal. So it has come about that the domain of liberty, withdrawn by the Fourteenth Amendment from encroachment by the states, has been enlarged by latter-day judgments to include liberty of the mind as well as liberty of action. The extension became, indeed, a logical imperative when once it was recognized as long aso as it was, that liberty is something more than exemption from physical restraints . . ." [62]

Freedom of thought, then, has been held to be a fundamental right. In fact the connection between liberty of thought and the right to keep those thoughts private is inescapable.

Griswold v. *Connecticut* [63] is a landarmk Supreme Court case upholding the constitutionality of this right of privacy. The Court stated that, along with the other amendments, "the First Amendment has a penumbra where privacy is protected from governmental intrusion." [64]

In a concurring opinion, Justice Goldberg urged that privacy does not have to be inferred from enumerated freedoms. Instead, the Ninth Amendment can be turned to, for it "simply shows the intent of the Constitution's authors that other fundamental personal rights should not be denied such protection or disparaged in any other way simply because they are not specifically listed in the first eight constitutional amendments." [65]

Justice Goldberg went on to say that in deciding what rights are fundamental we must examine our traditions to discover the principles rooted there. In *Griswold*, the controversy revolved around the marriage relationship and the privacy traditionally accorded its intimacies. The Court declared, "We deal with a right to privacy older than the Bill of Rights . . ." [66] Certainly the right to privacy in our minds, to speak or keep silent about our thoughts, is one of the oldest and most basic principles of human individuality and life. Such a valued tradition should not be tampered with for reasons of alleged expediency.

Though the *Griswold* decision focused on the right to privacy as peripheral to First Amendment rights, it was noted that other constitutional guarantees manifest this same purpose:

"The Fourth Amendment explicitly affirms the 'right of the people of be secure in their persons, houses, papers, and effects against unreasonable searches and seizures.' The Fifth Amendment in its Self-Incrimination Clause enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment." [67]

Boyd v. *United States* [68] recognized that in questions of privacy the Fourth and Fifth Amendments are closely tied, as explained in a passage from the Court's opinion:

"The principles laid down in this opinion [of Lord Camden] affect the very essence of constitutional liberty and security . . . they apply to all invasions on the part of the government and its employers, of the sanctity of a man's home and the privacies of life. It is not the breaking of his doors and the rummaging of his drawers that constitutes the essence of the offense; but it is the invasion of his indefeasible right of personal security, personal liberty and private property where that right has never been forfeited by his conviction of some public offense . . . any forcible and compulsory extortion of a man's own testimony or of his private papers to be used as evidence to convict him of a crime or to forfeit his goods is within the condemnation of that judgment [of Lord Camden]. In this regard the Fourth and Fifth Amendments run almost into each other." [69]

Several of the points made in *Boyd* can be related to the issues of a federal employee's rights, to the nature of the self-incrimination and unreasonable search and seizure protections outside of criminal proceedings. Clearly, the Constitution does not limit these guarantees to a criminal context. In the landmark decision *Miranda* v. *Arizona*,[70] in which guidelines were first set forth for the questioning of suspects to secure the Fifth Amendment protection, the Supreme Court maintained that "the privilege is fulfilled only when the person is guaranteed the right 'to remain silent unless he chooses to speak in the unfettered exercise of his own will' " [71] The Court further noted that, "Today, then, there can be no doubt that the Fifth Amendment privilege is available outside of criminal court proceedings and serves to protect persons in all settings in which their freedom of action is curtailed from being compelled to incriminate themselves." [72]

These tenets of *Boyd* and *Miranda* are indeed relevant to employment situations and polygraph-induced confession even though the purpose of such tests is not to elicit incriminating evidence for a court. Congressional hearings into the use of polygraphs in federal employment determined that:

"The polygraph technique forces an individual to incriminate himself and confess to past actions which are not pertinent to the current investigation. He must dredge up his past so he can approach the polygraph machine with an untroubled soul. The polygraph operator and his superiors then decide whether to refer derogatory information to other agencies or officials." [73]

The concern in *Miranda* was to compensate for the coercive aura of a police station to insure that all precautions are taken so that a suspect does not feel compelled to speak. Where obtaining or retaining a job is dependent upon the taking of a polygraph test, the environment can be just as coercive. Employment is vital to existence and survival in our modern society, and the competition for jobs is great. The submission to polygraph examinations is pre-employment interviews is deemed voluntary, but the knowledge that a refusal will automatically end the employment opportunity undermines this claim. Furthermore, the onus of guilt, of hiding potentially damaging revelations that accompanies a refusal to be tested by a polygraph further reduces the voluntary aspect. Many job offers are conditioned upon an agreement to submit to future polygraph tests, entirely eliminating any element of choice. For a person seeking or obtaining a job to be coerced to reveal private knowledge, thoughts, and beliefs would appear repugnant to Supreme Court cases which recognize the constitutional rights of employees.[74] The price of gaining employment must not be a surrendering of civil liberties.

The polygraph examiner's questions themselves can be extremely coercive resulting from "the subject's defensive willingness to elaborate on his answers because he fears that unless he reveals all the details, the machine will record that he is lying even when his basic story is true." [75] Freedom from being compelled to make self-incriminating disclosures, a part of every citizen's right to privacy, should be applicable to a business setting, expecially where polygraphs are in use, for, as one commentator summarizes:

". . . the nature of an employer's inquiries about past deeds and guilt is often indistinguishable from criminal interrogation. Moreover, the loss of personal liberty or property which would result from a criminal conviction is often no more significant than the denial of livelihood which may result from compelled testimony concerning past and present activities, associations, and even beliefs during preemployment or promotion screening via personality and polygraph testing.[76]"

Another matter germane to the self-incrimination discussion is the question of how the responses elicited by the polygraph machine and examiner are characterized. In response to the growing complex of investigative techniques available for the identifying of a suspect in a criminal case, a distinction has emerged between physical as opposed to communicative evidence. Thus, a person may be compelled to provide a sample of his handwriting,[77] to speak,[78] or to exhibit his body for identification,[79] but he may not be expected to be a source of testimonial evidence against himself. In *Schmerber* v. *California*,[80] in which the Court held that the taking of a blood sample over petitioner's objections did not violate constitutional requirements, the polygraph was discussed in relation to the difficulties inherent in the process of separating physical evidence from communications. The opinion noted:

"Some tests seemingly directed to obtain 'physical evidence,' for example, lie detector tests measuring changes in body function during interrogation, may actually be directed to eliciting responses which are essentially testimonial. To compel a person to submit to testing in which an effort will be made to determine his guilt or innocence on the basis of physiological responses, whether willed or not, is to evoke the spirit and history of the Fifth Amendment." [81]

The technique applied to extract information from an individual must, also be weighed against Fourth Amendment considerations. Methods for obtaining evidence, though in theory permissible, must, the Court has held, adhere to other principles as well as strict constitutional ones. In *Rochin* v. *California*,[82] the Court deemed it proper to refer to the sense of the community in determining whether drugs obtained from a forced stomach pumping could be used to achieve a conviction. The opinion concluded that "conduct that shocks the conscience" must be prohibited: "They are methods too close to the rack and the screw to permit of constitutional differentiation." [83]

The Fourth Amendment protection against unreasonable searches and seizures does not apply merely to criminal matters. "It is surely anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior." [84] In dissenting from a 1928 opinion upholding the constitutionality of wiretaps, Justice Brandeis, gazing into the future, predicted and worried that:

"Advances in the psychic and related sciences may bring means of exploring unexpressed beliefs, thoughts and emotions . . Can it be that the Constitution affords no protection against such invasions of individual security? [85]

Footnotes at end of article.

The Fourth Amendment has now been recognized as applying to more than simple physical trespass.[86] Electronic listening devices,[87] police "stop-and-frisk" procedures,[88] the taking of fingernail scrapings,[89] all have come under its purview. The retention of an individual's privacy, in the face of ever increasing odds against it, is obviously a significant concern. Courts have found it to be their legitimate duty to protect this fundamental principle, as set forth in *Mapp* v. *Ohio:*[90]

"We find that as to the federal government, the Fourth and Fifth Amendments and, as to the states, the freedom from unconscionable invasions of privacy and the freedom from convictions based on coerced confessions do enjoy an "intimate relation" in their perpetuation of "principles of humanity and civil liberty [secured] only after years of struggle."[91]

In the staff's view, polygraphs used in employment indisputably fall within the areas of constitutional concern presented here. To many knowledgeable commentators the relationship is evident.[92] To be probed and questioned so deeply, to be expected to reveal personal attitudes and beliefs under conditions such as those imposed by polygraph testing, is to be subjected to searches and seizures that are unreasonable, to coerced self-incrimination, to loss of civil liberties that amount to a true invasion of privacy.

FOOTNOTES

[23] *Ibid.*, pp. 699–700.
[24] *Ibid.*, p. 704.
[25] *Ibid.*, p. 705.
[26] ACLU Report, p. 4.
[27] Skolnick, *op. cit.*, pp. 704 and 705.
[28] ACLU Report, p. 5.
[29] Burkey, *op. cit.*, p. 81.
[30] Martin T. Orne and Richard I. Thackery, "Methodological Studies in Detection of Deception," distributed by the Clearinghouse for Federal Scientific and Technical Information, Dept. of Commerce.
[31] *Ibid.*, summary.
[32] *Ibid.*
[33] Frank S. Horvath and John E. Reid, "The Reliability of Polygraph Examiner Diagnosis of Truth and Deception," *The Journal of Criminal Law, Criminology and Police Science,* vol. 62, 1971, p. 276.
[34] *Ibid.*, p. 278.
[35] *Ibid.*, p. 281.
[36] *Ibid,* p. 278.
[37] Skolnik, *op. cit.*, p. 699.
[38] *Ibid.*, p. 715.
[39] *Ibid.*, p. 715.
[40] *Ibid.*, pp. 717–718.
[41] Hearings, pp. 10–11
[42] *Ibid.*, pp. 12–13.
[43] H. B. Dearman, M.D. and B. M. Smith, Ph.D., "Unconscious Motivation and the Polygraph Test," *The American Journal of Psychiatry,* May 1963, p. 1019.
[44] Skolnick, *op. cit.*, p. 701.
[45] *Ibid.*, p. 700.
[46] Dearman and Smth, *op. ct.*, pp. 1017–1018.
[47] Equal Employment Opportunity Commission brief related in *Circle K. Corp.* v. *EEOC.*, U.S. Ct. of Appeals, 10th Circuit, case No. 72-1967, p. 8 (hereinafter cited as EEOC brief).
[48] S. Kugelmass, "Effect of Three Levels of Realistic Stress On Differential Psychological Reactivities," report for the Air Force Office of Scientific Research.
[49] *Ibid.*, pp. 22–23.
[50] EEOC, brief, p. 7.
[51] Skolnick, *op. cit.*, p. 705.
[52] Joseph F. Kubis, "Studies In Lie Detection," report for the Air Force Systems Command, N.Y. June 1962.
[53] Skolnick, *op. cit.*, p. 707.
[54] Burkey, *op. cit.*, p. 87.
[55] Pete J. Perras, "Polygraph Invaluable Tool," *The Charlotte Observer,* July 6, 1971.
[56] Franklin, *loc. cit.*
[57] *Ibid.*
[58] Dearman and Smith, *op. cit.*, p. 1019.
[59] Howard S. Altarescu, "Problems Remaining for the 'Generally Accepted' Polygraph," 53 Boston Univ. L. Rev. 375 (1973), p. 376.
[60] *Griswold* v. *Connecticut,* 381 U.S. 479 (1965), pp. 482–483.
[61] 302 U.S. 319 (1937).
[62] *Ibid.*, p. 327. For other related discussions see *Abrams* v. *U.S.*, 250 U.S. 616 (1919), Holmes dissent; *Whitney* v. *California,* 274 U.S. 357 (1927), Brandeis concurrence.
[63] 381 U.S. 479 (1965).
[64] *Ibid.*, p. 483.
[65] *Ibid.*, Goldberg concurrence, p. 492. For another discussion of privacy see *Poe* v. *Ullman,* 367 U.S. 497 (1961), Harlan dissent.
[66] *Ibid.*, p. 486.
[67] *Ibid.*, p. 484.
[68] 116 U.S. 616 (1885).
[69] *Ibid.*, p. 630.
[70] 384 U.S. 436 (1966).
[71] *Ibid.*, p. 460, quoting *Malloy* v. *Hogan,* 378 U.S. 1 (1964).
[72] *Ibid.*, p. 467.
[73] Hearings, pp. 19–20.
[74] See *Slochower* v. *Board of Education,* 350 U.S. 551 (1955); *Garrity* v. *New Jersey,* 385 U.S. 493 (1966); *Keyishian* v. *Board of Regents,* 385 U.S. 589 (1967).
[75] ACLU Report, p. 35.
[76] Hermann, *op. cit.*, p. 131.
[77] *Gilbert* v. *California,* 388 U.S. 263 (1967).
[78] *U.S.* v. *Dionisio,* 93 S. Ct. 764 (1973).
[79] *U.S.* v. *Wade,* 388 U.S. 218 (1967).
[80] 384 U.S. 757 (1966).
[81] *Ibid.*, p. 764.
[82] 342 U.S. 165 (1952).
[83] *Ibid.*, p. 172.
[84] *Camara* v. *Municipal Court,* 387 U.S. 523 (1966), p. 530.
[85] *Olmstead,* Brandeis dissent, p. 474.
[86] *Katz.* v. *U.S.*, 389 U.S. 347 (1967).
[87] *Ibid.*
[88] *Terry* v. *Ohio,* 392 U.S. 1 (1968).
[89] *Cupp v. Murphy,* 412 U.S. 291 (1973).
[90] 367 U.S. 643 (1961).
[91] *Ibid.*, p. 657, quoting *Bram* v. *U.S.*, 168 U.S. 532 (1897).
[92] See ACLU Report and Hermann.

Mr. BAYH. Finally, it is not mere rhetoric, Mr. President, but a painful fact that the procedures used in taking polygraphs far too strikingly resemble something from George Orwell's "1984." The prospective job applicant or employee is situated in a waiting room to be observed through a one-way mirror by the examiner who attempts to ascertain the individual's initial reaction to the entire procedure. A polygraphist enters and proceeds to ask seemingly innocuous control questions which assist him in determining the type of individual he is dealing with. At the appropriate time, the pneumograph tube—to measure respiration—is placed about the subject's chest, the blood pressure cuffs—sphygmometer—are secured around the upper arms and electrodes are attached to the arms and hands. Tension is accentuated because a job and future, and much more, are at stake. I do not believe, Mr. President, that any American should be subjected to this degrading procedure.

I ask unanimous consent that the conclusions of the subcommittee staff study, together with the text of the bill be printed in the RECORD.

There being no objection, the material and bill were ordered to be printed in the RECORD, as follows:

THE POLYGRAPH TEST: CONCLUSIONS

A congressional subcommittee has concluded:

"There is no 'lie detector,' neither machine nor human. People have been deceived by a myth that a metal box in the hands of an investigator can detect truth or falsehood."

But whether or not the polygraph is a myth, it seems clear that it is here to stay. And, given modern ingenuity, it is not unreasonable to expect that new techniques and devices will be devised in an attempt to facilitate determining honesty. There are, in fact, some already in use. The "wiggle seat" is a new contraption for lie detecting derived from the original polygraph. It, too, measures and records physiological changes due to heart action and a person's nervous movements, but with an added advantage over the polygraph. The wiggle seat's sensing is mounted in an ordinary office chair. A subject sitting in the chair has his mechanical energy changed to electrical energy which is broadcast to hidden recording instruments. Thus, the response detection can go on completely without the subject's knowledge.

Another type of examination that is gaining acceptance in American business is the Psychological Stress Evaluator (PSE).[116] The PSE registers the FM vibrations in a person's voice. The premise is that under stress the FM modulation is altered due to mouth and throat tightening. A graphic picture of the voice's modulations is made, and the presence and absence of stress are judged according to the character of the markings. The obtaining of the conversation to be assessed can be done secretively with the use of hidden tape recorders. The questions posed by this method are the same as those that critics of the polygraph have been raising, and proponents have been trying to refute, for years. Can the stress in a person's voice be directly attributed to lying? Can the evaluator objectively and accurately detect lies from physiological recordings of the voice? What of the constitutional problems of testing a speaker without his knowledge, so easily accomplished by the PSE technique?

These two innovations indicate that rather than being curtailed, use of the polygraph is being expanded, particularly in private business. Attitudes of employers, insofar as polygraph testing is concerned, are characterized in the following: "If a person refused to take the test, we probably wouldn't hire him."[117] "I use the polygraph because I got tired of playing God. It's hard to tell things by looking at people."[118] Even a U.S. Court of Appeals has lent its approval to polygraph testing:

"A statement challenged on the ground that it was obtained [from a polygraph examination administered to petitioner as a part of a hiring procedure] as the result of economic sanctions must be rejected as involuntary only where the pressure reasonably appears to have been of sufficiently appreciable size and substance to deprive the accused of his "free choice to admit, to deny, or to refuse an answer" . . . But the threat of discharge for a job as a driver's assistant, which Sanney had held for one or two days, can hardly be labelled a "substantial economic sanction" rendering his statement involuntary."[119]

These comments indicate that if polygraphs are here to stay, so, in fact, are the constitutional problems inherent in their use.

The right to privacy is basic to the American way of life and recognized as inherent in and guaranteed by the constitutional provisions of the First, Fourth and Fifth Amendments. The federal government ordinarily strives to curtail and prevent infringements of individual rights such as these. But the polygraph, as a tool of public and private

Footnotes at end of article.

employers, clearly demands more attention. Compulsory submission to a polygraph test is an affront to the integrity of the human personality that is unconscionable in a society which values the retention of individuals' privacy. Employers have a multitude of less objectionable resources at their disposal for investigating applicants' backgrounds and employees' performances. Expediency is not a valid reason for pitting individuals against a degrading machine and process that pry into their inner thoughts. Limits, beyond which invasions of privacy will not be tolerated, must be established. The Congress should take legislative steps to prevent Federal agencies as well as the private sector from requiring, requesting, or persuading any employee or applicant for employment to take any polygraph test. Privacy is a fundamental right that must be protected by prohibitive legislation from such unwarranted invasions.

FOOTNOTES

[116] Fred P. Graham, "Lie Detecting By a Voice Is Center of Controversy," *New York Times*, June 5, 1972, p. 1.

[117] Bill Bradley of Eckerd Corp. quoted in "To Catch A Thief," *Newsweek*, Sept. 23, 1974, p. 80.

[118] St. Petersburg, Fla. Chevrolet dealer quoted in "To Catch A Thief," *Newsweek, Ibid.*

[119] From a Court of Appeals opinion, *Sanney v. Montanye*, 6/20/74, reported in *The United States Law Week*, 43 LW 2027, 7-23-74.

S. 1841

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 13, of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 246. Polygraph testing in connection with employment

"(a) For purposes of this section, the term—

"(1) 'polygraph test' means an examination administered to an individual by mechanical or electrical means to measure or otherwise examine the veracity or truthfulness of such individual; and

"(2) 'employee organizations' includes any brotherhood, council, federation, organization, union, or professional organization made up in whole or in part of employees and which has as one of its purposes dealing with departments, agencies, commissions, independent agencies of the United States, or with businesses and industries engaged in or affecting interstate commerce, concerning the conditions and terms of employment of such employees.

"(b) (1) Any officer or employee or person acting for or on behalf of the United States who willfully—

"(A) permits, requires, or requests, or attempts to require or request, any officer or employee of the United States, or any individual applying for employment as an officer or employee of the United States, to take any polygraph test in connection with his services or duties as an officer or employee, or in connection with such individual's application for employment; or

"(B) denies employment to any individual, or discharges, disciplines, or denies promotion to any officer or employee of the United States, or threatens to commit any such act by reason of his refusal or failure to submit to such requirement or request,

shall be guilty of a misdemeanor and punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both.

"(2) Any person engaged in any business or other activity in or affecting interstate commerce, or any individual acting under the authority of such person who willfully—

"(A) permits, requires, or requests, or attempts to require or request any individual employed by such person or any individual applying for employment in connection with such business or activity to take any polygraph test in connection with his services or duties or in connection with his application for employment; or

"(B) who denies employment to any individual, or discharges, disciplines, or denies promotion to any individual employed in connection with such business or activity, or threatens to commt such act by reason of his refusal or failure to submit to such requirement or request,

shall be guilty of a misdemeanor and punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both.

"(c) (1) Whenever—

"(A) any officer or employee or any person acting for or on behalf of the United States, or

"(B) any person engaged in any business or other activity in or affecting interstate commerce, or any individual acting under the authority of such person,

violates or threatens to violate any of the provisions of subsection (b) of this section, any employee or officer of the United States, or any person applying for employment in the executive branch of the United States Government, or any individual seeking to establish civil service status or eligibility for employment in the United States Government, or any individual applying for employment in connection with any business or activity engaged in or affecting interstate commerce, or any individual employed by a person engaged in such business or activity, who is affected or aggrieved by the violation or threatened violation, may bring a civil action in his own behalf or in behalf of himself and others similarly situated, against the offending officer or employee or person in the United States District Court for the district in which the violation occurs or is threatened, or for the district in which the offending person is found, or in the United States District Court for the District of Columbia, to prevent the threatened violation or to obtain redress against the consequences of the violation.

"(2) The district courts of the United States shall have jurisdiction to try and determine such civil action irrespective of the actuality or amount of pecuniary injury done or threatened, and without regard to whether the aggrieved party shall have exhausted any administrative remedies that may be provided by law, and to issue such restraining order, interlocutory injunction, permanent injunction, or mandatory injunction, or enter such other judgment or decree as may be necessary or appropriate to prevent the threatened violation, or to afford the plaintiff and others similarly situated complete relief against the consequences of the violation.

"(3) With the written consent of any person affected or aggrieved by a violation or threatened violation of subsection (b) of this section, any employee organization may bring such action on behalf of any such person, or may intervene in such action."

(b) The analysis of chapter 13 of such title is amended by adding at the end thereof the following new item:

"246. Polygraph testing in connection with employment."

SEC. 2. The amendments made by this Act shall become effective thirty days after the date of enactment.

ADDITIONAL COSPONSORS OF BILLS AND RESOLUTIONS

S. 334

At the request of Mr. HATHAWAY, the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 334, a bill to prohibit sex discrimination by educational institutions whose primary purpose is the training of individuals for the military service of the United States.

S. 1000

At the request of Mr. HUGH SCOTT (for Mr. MAGNUSON), the Senator from Oregon (Mr. HATFIELD) was added as a cosponsors of S. 1000, a bill to prohibit the Consumer Product Safety Commission from restricting the sale or manufacture of firearms or ammunition.

S. 1153

At the request of Mr. MONDALE, the Senator from Nevada (Mr. LAXALT) was added as a cosponsor of S. 1153, the Truth in Contributions Act.

S. 1625

At the request of Mr. PACKWOOD, the Senator from Arizona (Mr. GOLDWATER), the Senator from South Carolina (Mr. HOLLINGS), and the Senator from North Carolina (Mr. MORGAN) were added as cosponsors of S. 1625, a bill to extend and revise the State and Local Fiscal Assistance Act of 1972.

S. 1776

At the request of Mr. HUGH SCOTT, the Senator from Montana (Mr. MANSFIELD) was added as a cosponsor of S. 1776, a bill to authorize the Secretary of the Interior to establish the Valley Forge National Historical Park in the Commonwealth of Pennsylvania, and for other purposes.

S. 1801

At the request of Mr. TAFT, the Senator from South Carolina (Mr. THURMOND) was added as a cosponsor of S. 1801, a bill to provide an alternative plan for providing essential rail services to the Midwest and Northeast regions of the United States, to modernize certain railroad procedures, and for other purposes.

SENATE RESOLUTION 158

At the request of Mr. PACKWOOD, the Senator from Alaska (Mr. STEVENS), the Senator from Michigan (Mr. PHILIP A. HART), the Senator from Iowa (Mr. CULVER), the Senator from Kentucky (Mr. FORD), and the Senator from Pennsylvania (Mr. SCHWEIKER) were added as cosponsors of Senate Resolution 158, a resolution to express the sense of the Senate that the income tax rebates should not be subject to State income tax.

SENATE JOINT RESOLUTION 63

At the request of Mr. PERCY, the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of Senate Joint Resolution 63, to authorize the President to designate the period from June 8, 1975, through June 15, 1975, as "National Wheelchair Athletes' Week."

SENATE RESOLUTION 172—ORIGINAL RESOLUTION REPORTED RELATING TO THE PAYMENT OF WITNESS FEES

(Place on the Calendar.)

Mr. CANNON, from the Committee on Rules and Administration, reported the following resolution:

S. RES. 172

Resolved, That witnesses summoned to appear before the Senate or any of its com-

mittees shall be entitled to a witness fee rated at not to exceed $35 for each full day spent in traveling to and from the place of examination and for each full day in attendance. A witness shall also be entitled to reimbursement of the actual and necessary transportation expenses incurred by him in traveling to and from the place of examination, in no case to exceed 35 cents a mile for the distance actually traveled by him for the purpose of appearing as a witness if such distance is not more than six hundred miles or 20 cents a mile if such distance is more than six hundred miles.

AMENDMENTS SUBMITTED FOR PRINTING

AUTHORIZATION OF CERTAIN CONSTRUCTION AT MILITARY INSTALLATIONS—S. 1247

AMENDMENT NO. 498

(Ordered to be printed and to lie on the table.)

TRANSFER OF SURPLUS ARMY LAND TO AUGUSTA COLLEGE

Mr. NUNN. Mr. President, this amendment is identical to S. 3831, which I submitted on July 30, 1974. It authorizes the transfer of a 5-acre parcel of land from the Department of the Army to Augusta College in Augusta, Ga. The distinguished senior Senator from Georgia, Senator TALMADGE, joins me as a cosponsor of this amendment. Congressman ROBERT STEPHENS, who represents Georgia's 10th Congressional District, and Congressman JACK BRINKLEY, who represents Georgia's Third Congressional District, have introduced legislation in the House of Representatives as H.R. 4018 to accomplish this transfer.

The purpose of this amendment is to facilitate the transfer of the land which is desired by both parties to the transaction. Provision is made in this measure for the payment of full market value. There are no other competing claims to the land, and no objections to the conveyance have been voiced from any quarter. By authorizing the Secretary of the Army to make the transfer directly to the board of regents of the University of Georgia for Augusta College, the bill is merely intended to simplify, accelerate, and assure completion of the transfer.

This amendment represents the completion of a process of negotiation and cooperation which goes back nearly 4 years when the first request by the college for the Army site adjacent to the school was made. In fact, the story begins nearly 20 years ago.

At that time, in 1955, about 70 acres of property occupied by the Augusta Armory was declared surplus by the Army and acquired by the Richmond County Board of Education. Excluded from that transaction by the Army were approximately 5 acres at a corner of the tract. On this land in 1957 the Army built the present U.S. Reserve Armory, which has since served as a reserve training center.

In 1958 the board of education transferred the main body of the armory property to the board of regents of the University of Georgia for use by Augusta College. That same year Augusta College, then a small junior college with a history dating back to 1783, became a unit of the State university system.

The college and its new site underwent a remarkable growth and development in the succeeding 15 years. The college was transformed from a junior college into a senior institution offering, first, a baccalaureate program and, subsequently, graduate programs as well. Enrollment grew from less than 450 students in 1958 to over 4,000 students in 1975, drawn from throughout the Central Savannah River area of Georgia and South Carolina. The State of Georgia spent over $10 million to refurbish existing structures and add new facilities, developing a campus which today has a replacement value of over $30 million. In short, in a decade and a half, Augusta College has grown nine fold into a truly important community asset and a valuable State facility serving a broad and expanding area as an essential educational resource.

Anticipating that continued growth could push enrollment beyond the 6,000 mark by 1980 and recognizing that property for expansion was virtually nonexistent in the college's land-locked residential area, Augusta College officials first turned to the Army for help with its expansion in 1971. The college asked that the adjacent 5 acre armory and training center site be transferred to it to help relieve the space problems.

The Army was sympathetic to the college request. In fact, it was finding the 5-acre site smaller than it needed for its own expansion plans for the training center, but it had no suitable alternate site available. Thus began a cooperative effort extending to the present to find a mutually acceptable solution to the joint problem of relocation.

I do not intend to recount the efforts that have been required over the last 4 years to find the happy answer. Suffice it to say that it has been found through the determined efforts of the college under its able president, Dr. George Christenberry; through the unstinting cooperation of the Army, locally and in Washington; through the understanding and support of local and State officials and the assistance of Federal agencies; and with a boost where needed from the distinguished Senator from Georgia, Senator TALMADGE, from our esteemed colleague from South Carolina, Senator THURMOND, Congressman STEPHENS, Congressman BRINKLEY, and my own office.

The Army now has a fine site in Augusta on which to relocate its expanded reserve training center. Augusta College is moving ahead with plans to utilize the present site, and the transfer has been endorsed by all interested parties. The board of regents of the University System of Georgia has committed itself to expend funds to purchase the tract of land from the Army whenever congressional approval is obtained.

Hence, the next step required is enactment of the authorizing legislation I am submitting today. I recommend passage of this amendment as consonant with the best interests of the Department of Defense, the University System of Georgia, Augusta College and Richmond County, Ga., residents. I hope that the legislative wheels will roll smooothly and rapidly to passage so that we may soon set the seal of Federal approval on this fine example of cooperation, civilian and military, local, State and Federal.

Mr. President, I ask unanimous consent that this amendment be printed in the RECORD.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

AMENDMENT No. 499

At the end of the bill, insert the following:

TITLE IX

SEC. 901. The Secretary of the Army is authorized and directed to convey to the Board of Regents of the University System of Georgia, subject to the provisions of this Act, all of the right, title, and interest of the United States in and to a parcel of land, with improvements thereon, lying and being situated in Richmond County, city of Augusta, State of Georgia, more particularly described as follows:

Beginning at a chiseled X in concrete at the intersection of the south line of Walton Way with the west line of Katherine Street; thence along the west line of Katherine Street, south 02 degrees 27 minutes 55 seconds west 288.29 feet to a point 1 foot south of a cyclone fence; thence along a line 1 foot south of and parallel to a cyclone fence, north 85 degrees 31 minutes 15 seconds west 227.32 feet to a point 1 foot east of a cyclone fence; thence along a line parallel to and 1 foot east of a cyclone fence, south 04 degrees 19 minutes 50 seconds west 233.05 feet to a point; thence along a line 1 foot south of and parallel to a cyclone fence, north 85 degrees 19 minutes 27 seconds west 306.74 feet to a point 0.60 foot west of a cyclone fence; thence along a line parallel to and 0.60 foot west of a cyclone fence, north 04 degrees 59 minutes 48 seconds east 520.23 feet to a concrete monument on the south side of Walton Way; thence along the south side of Walton Way, south 85 degrees 30 minutes 15 seconds east 517.62 feet to the point of beginning, and containing 5.09 acres, more or less.

SEC. 2. The conveyance authorized by this Act shall be made upon payment to the United States of not less than the appraised fair market value of the land and the improvements thereon, as determined by the Secretary of the Army, or the sum of $662,000, whichever is the greater, and upon such terms, conditions, reservations, and restrictions as the Secretary of the Army shall deem necessary to protect the interests of the United States.

SEC. 3. The money received by the United States for the lands conveyed under this Act shall be credited to a special account in the Treasury and shall be available, without fiscal year limitation, for the construction of a United States Army Reserve Training Center on lands owned by the United States at the intersection of Jackson and Wrightsboro Roads, Augusta, Georgia.

SEC. 4. The cost of any surveys necessary as an incident to the conveyance authorized by this Act shall be borne by the Board of Regents of the University System of Georgia.

DEPARTMENT OF DEFENSE AUTHORIZATION ACT—S. 920

AMENDMENTS NOS. 500 AND 501

(Ordered to be printed and lie on the table.)

Mr. PROXMIRE submitted two amendments intended to be proposed by him to the bill (S. 920) to authorize appropriations during the fiscal year 1976, and the period of July 1, 1976, through September 30, 1976, for procurement of

of the offense and of the fine, whereupon he can pay personally or by mail, or petition the district court for judicial review. When a driver commits an administrative offense, and as a result causes an accident which produces personal or property damage, the administrative offense becomes a misdemeanor, and the driver becomes liable to criminal prosecution.

The results of this new method of dealing with traffic violations will be closely followed to determine the desirability of extending it to other criminal offenses of the traffic law.

Among the most important amendments to the rules of criminal procedure are the following:

The need to corroborate an accomplice's testimony was eliminated; the rule requiring corroboration of the prosecutrix's testimony in cases of rape was changed.

Puerto Rico's obsolete Penal Code of 1902 was repealed, and a new code was approved recognizing the duel function of punishment as a means of retribution, deterrence, and rehabilitation and establishing new crimes in accordance with modern times.

To expedite judicial proceedings the post of Public Prosecuting Attorney for the District court legel was created and the "de novo trial" was eliminated. Rules to govern police line-up and photography proceedings were adopted.

The commencement of a trial in the absence of a defendant validly summoned in arraignment was authorized, permitting the impanelling of the jury, the presentation of evidence, and the return of the verdict without the defendant's presence. To maintain order when a defendant's conduct tends to interrupt judicial proceedings, the Act also authorizes: (a) contempt proceedings; (b) adoption of any other pertinent coercive measures; (c) defendant's removal from the courtroom.

Pretrial conferences were established, to aid in reducing controversies and in planning court calendars. To shorten voir dire proceedings, jurors' preliminary examinations will now be conducted by the judge. An amendment was introduced permitting the substitution of another judge for a disabled judge in a criminal trial in any phase prior to the verdict. Criteria for the imposition of bail and a swift procedure for the revision of the amount of bail were enacted.

Various acts were approved relating to correctional reform. One act created an autonomous agency to direct correctional policy and administer the correctional system.

In the civil area, amendments were introduced to ex-parte proceedings relating to declaration of heirship, amendments or additions to documents filed in the general registry of vital statistics, and waiver of consanguinity for marriages, eliminating the need of judicial hearings except on the court's initiative or upon motion by a party.

To reduce the cost of legal proceedings, the attorney's contingent fee in tort cases was limited. In addition, compensation to a public official or employee for his judicial appearance or testimony as regular or expert witness, was restricted.

The integrated reform of the Puerto Rican system of justice as described in this article shows that the three branches of government can—without overlapping their respective, autonomous powers—successfully coordinate public and private resources to revise the system of law.

But reform is a continuous process. To complement the vast legislation enacted, the Justice Department and the Office of Court Administration are sponsoring island-wide seminars to explain the new acts to judges, prosecutors, lawyers and other members of the community. The Bar Association is contributing to these activities.

The council's work continues. Recently three more reports were filed by the commissions on labor law, civil law and the office of the public prosecutor. More reports are expected soon. The Supreme Court and the Chief Justice, are enacting new administrative rules and norms for the courts, and a new judiciary act is being considered.

All those who are participating in the process of revitalizing Puerto Rico's system of law share a firm personal conviction that Aristotle's conception of justice as the highest and most valuable human virtue is an attainable goal when duly administered by diligent, prudent, moral, patient and impartial judges.

Then only, will we be closer to Roscoe Pound's prophetic vision ". . . of a future when our courts will be swift and certain agents of justice, whose decisions will be acquiesced in and respected by all." [4]

ROMANIA's OPPRESSED HUNGARIAN MINORITY

HON. CLAUDE PEPPER

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Monday, July 28, 1975

Mr. PEPPER. Mr. Speaker, I wish to indicate that, while I intend to vote for House Concurrent Resolution 252, I have some strong reservations about it.

I was a cosponsor of House Concurrent Resolution 326, which is not now before us because of the promises of the Assistant Secretary of State for European Affairs, Arthur A. Hartman, before the International Relations Committee's Subcommittee on Trade, which I hope will be lived up to.

It would be a mockery of our traditions of freedom to strive for close relations with Romania without making it clear that we condemn the present treatment meted out to ethnic and religious minorities in that country, which compares unfavorably even with that of the other countries of East Central Europe which have Communist governments. Many detailed cases of oppression and harrassment were presented during the subcommittee's hearings, showing the systematic campaign being conducted against the Along with this domestic oppression, Romania, as well as against Roman Catholic and Protestant groups in the country. Along with this domestic oppression, Rumania has a dismal record in respect to allowing the relatives of U.S. citizens to emigrate to the United States.

Under these circumstances our votes in favor of House Concurrent Resolution 252 should not be misconstrued as approval of Romanian policies and we reserve the right to raise the issue again after the 18-month waiver period expires, unless redress is given to the minorities in Rumania.

Thirty-nine Members of the House, including myself, petitioned the President last Friday to make sure that the State Department follows through on its promise and asked that he raise the issue in his talks with President Ceaucescu during his current European visit. We hope that he will listen to our concerned voices so that détente with Romania will not become tantamount to abandonment of our humanitarian concern for the human and civil rights of people everywhere.

---

[4] Pound, Roscoe: *The Causes of Popular Dissatisfaction with the Administration of Justice;* 40 American L. Rev. 729 (1906), reprinted, 46 J. Am. Jud. Soc. 55 (1962).

TITLE: SOLVING OUR ENERGY PROBLEMS

HON. SHIRLEY N. PETTIS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, July 28, 1975

Mrs. PETTIS. Mr. Speaker, the time has come for Congress to realize that there is no easy way out of or around our energy problems. We cannot just wave a magical wand and make the oil crisis get better or go away.

We hear much talk about the economic impact of the President's program to decontrol "old oil" over a period of 30 months because it is "politically expedient" for some of us to continue deluding our constituents into thinking that there is a cheap, painless way out of this predicament. We must stop telling the American people that energy can be available inexpensively when we know the contrary to be true. We must stop the rhetoric and begin offering constructive and comprehensive ways to solve our energy problems instead of blindly pursuing courses which perpetuate them.

Mr. Speaker, I offer the following editorial from the Christian Science Monitor as one more piece of convincing evidence, that the majority in Congress is only deluding itself by pursuing the legislative course which it has decided to follow:

[From the Christian Science Monitor, July 23, 1975]

FORD'S HANDLE ON OIL

Democrats in Congress may be winning points with the public in their battle with President Ford over oil prices. But the President is moving in the only logical direction over the long run. Americans, even if reluctantly, must accept the inevitability of higher-cost energy and a change in their living habits.

It was not easy for Mr. Ford to veto still another Democratic bill, this one designed to keep the controls on domestically produced "old" oil. The fact that the White House gave little publicity to the veto action suggests the political awkwardness of it. But, given the world's depleting oil resources, the President has no realistic alternative: He must pursue a long-range program that forces consumers to reduce the use of oil, encourages the expansion of domestic production, and gets the U.S. away from growing dependence on foreign supplies.

The decontrol of "old" oil would not necessarily give an impetus to new exploration in the short run because the oil companies are going full steam now. But it would encourage the use of secondary or tertiary recovery methods on old wells, adding perhaps billions of barrels of oil to the domestic supply. Moreover, it would also simplify the petroleum market, which now functions under an unwieldy two-price structure, and it would make alternative sources of energy, like solar heat, more attractive costwise.

The major concern of course is that a deregulation of prices on "old" oil, which accounts for 60 percent of all domestic production, will trigger sharp increases in fuel costs, and add to inflationary dangers at the very moment the economy is beginning to

turn around. Whether the impact would be anywhere near as great as Democrats charge is questioned by economists. But, in any event, the intent of the administration is to phase out the controls gradually—and to place a tax on the windfall profits of oil companies that can be rebated to the consumer to offset the economic impact.

There obviously will be a compromise between the White House and the Democratic Congress. Without it, the controls on old oil will expire August 31 and this would produce an immediate and sudden jump in oil prices. Both sides want to avoid this.

But amid the complex political maneuvering now going on one thing stands out: The nation does not yet have a solid, comprehensive energy program that is understood and supported by the American public. Recession has put the energy question on the back burner, the politicians in Congress don't want to make tough decisions, and an abundance of oil on the market defies all warnings of crisis.

Somehow, there has to be better communication between government and public on this crucial matter. According to the New York Times, Mr. Ford plans to send to Congress another program of oil price decontrol. Perhaps this would be a good occasion for him to go to the nation and explain the ABCs of the energy dilemma. Americans have never lacked an ability to adapt to new conditions—but they need convincing that the time for change is now.

THE DEATH OF REV. ALPHOS A. SKONIECKI

HON. SILVIO O. CONTE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Monday, July 28, 1975

Mr. CONTE. Mr. Speaker, it was with great sadness and deep regret that I learned of the death of the Reverend Alphos A. Skoniecki in Turners Falls, Mass. Father Skoniecki was a great friend, and both his friendship and spiritual leadership will be sorely missed.

A native of Zielun, Poland, Father Skoniecki came to Canada at the outbreak of World War I, where he graduated from the University of Montreal in 1915. During World War I he was active in recruiting Polish citizens in America for the Polish Army, and was later instrumental in raising funds for the rebuilding of Poland after the war.

From 1918–25, Father Skoniecki served as the pastor of the Sacred Heart Church in Easthampton, Mass., a position to which he brought great dedication and understanding. He later served as pastor of Our Lady of Czestochowa Church in Turners Falls from 1925–48. During this time he was always known for his responsiveness to the needs of his parishoners and the open arms and heart with which he greeted those in need. Father Skoniecki celebrated his 50th year of ordination in 1967 while pastor of the Saints Peter and Paul Church in Palmer, Mass.

In addition to his inspirational work as a man of the cloth, Father Skoniecki was also a distinguished journalist. He was the founder and editor of Piast, the Polish language newspaper in Chicopee, Mass., from 1918–25. He was also the founder of the Chicopee Herald.

During World War II, Father Skoniecki was the executive secretary for the Coordinating Committee of Seven Eastern States working to point out the dangers of communism to Members of Congress. In recognition of his wartime efforts, Father Skoniecki was made a lieutenant colonel in the Polish Army in 1954.

For his journalistic and charitable works for the liberation of Poland and the Polish cause, Father Skoniecki received the Polish Army Cross of Merit, the Silver Sword of General Haller, and the Silver Cross of the Polish Roman Catholic Union of America.

Father Skoniecki was a most talented man, a dedicated clergyman, a great patriot, and a distinguished journalist. He will be greatly missed, although in the hearts of those who had the great fortune of knowing him he will never be forgotten.

THE LIE-DETECTOR AND THE THREAT TO CONSTITUTIONAL RIGHTS

HON. EDWARD I. KOCH

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, July 28, 1975

Mr. KOCH. Mr. Speaker, I would like to draw to the attention of my colleagues an excellent article which appeared in the Washington Star concerning the polygraph machine: the problems it seeks to solve and the problems that it creates. The experiences of the author, Jim McClellan, vividly depict the pressures that the polygraph machine's use in employment can put on our fragile system of constitutional rights. His is the story of a person so intimidated by the polygraph that he felt compelled to confess to having purloined a handful of popcorn at his job. He was forced to take not one but three lie-detector tests, and when the third time he refused, he was fired.

However well intentioned the polygraph examiner may be, as I believe the one in this story is, the legitimate rights of such people as Jim McClellan are jeopardized by the use of the lie detector. My bill, H.R. 2596, would ban the use of polygraphs in employment. Business can use fairer and more effective means to combat employee theft. Certainly, we cannot allow the rights of employees to be undermined for the expediency of employers.

I commend this article to my colleagues because it does present both sides of the issue. It is our responsibility in the Congress to come to grips with this threat to constitutional rights. The article follows:

[From the Washington Star, July 27, 1975]

MY LIE DETECTOR NIGHTMARE

(By Jim R. McClellan)

(NOTE.—Jim McClellan worked in a 7-Eleven store in Arlington from mid-1973 to mid-1974. His account of his reaction to company insistence that employes take polygraph tests follows.

Glenn Meggard's firm administered the tests to McClellan and other 7-Eleven employes. He disagreed with some of McClellan's impressions of events during the testing, and some of his remarks are reported here in italic type, as are some remarks of Frank Kitchen, Washington-Baltimore division manager for 7-Eleven.)

The "lie detector" is about as democratic way to apply for a job, or to remove one's self from suspicion." So says Glenn Meggard, president of Atlantic Security Agency Inc.

The 'lie detector' is about as democratic as the rack. That is my conclusion after experiences with polygraph tests both in applying for a job and in later trying to remove myself from suspicion.

I applied for a job as a clerk in a 7-Eleven store in 1973. After completing an application and passing a physical and an aptitude test, I was welcomed into what the parent Southland Corporation calls the "Southland Family."

I quickly came to see how my new corporate parents treated their children. The first thing I was made to do was take a trip over to see Glenn Meggard and his staff of veteran security agents for a polygraph test. It was Meggard's assignment to question me and to verify the truthfulness of statements in my application. In other words, 7-Eleven wanted to know whether my character was sterling enough for a $2-an-hour job.

Atlantic Security has three bland rooms leading off its lobby which are equipped for polygraph interrogations. I was led into one and seated in an oversized, almost comfortable chair.

The theory of the polygraph is that when a person gives a false response to a question there will be noticeable signs of stress: changes in blood pressure, breathing, pulse, and skin resistance. Never trust a palm sweater, you know.

The examiner told me it was important that I trust him and his machine and he was going to ask me some questions to familiarize me with the test and the equipment, and to put me at ease.

With the machine turned off, I was asked if I had stolen anything from a previous employer, if I smoked marijuana or used drugs, drank to excess, if I'd written bad checks; and questions generally probing whether I was truthful in filling out Southland's application.

With some preliminaries over, a tube was attached to my chest. A cuff which looked like the kind physicians use to measure blood pressure was inflated around my wrist. Some electrodes were attached to the fingers of one of my hands. I half expected a messenger to come running with a pardon from the governor, but it didn't happen.

The examiner told me to look at a spot on the wall about five feet in front of me, and warned that if my gaze strayed, or if I coughed, took a deep breath or fidgeted, the test results could be affected. Then the machine was turned on and I was asked all the questions again.

Fortunately, the machine vouched for my integrity and I started work at 7-Eleven.

MEGGARD. *It is standard polygraph practice to thoroughly acquaint a subject with each of the questions, and with the whole procedure, before the examination begins. Then the element of surprise or confusion—which could distort the meaning of a subject's responses—is eliminated, Meggard says.*

At the end of two months of faithful service to 7-Eleven I was given an opportunity to reaffirm my honesty. As a result of a $60 shortage, all the store's employes were required to pay another visit to Atlantic Security. I objected to taking another polygraph. I resented being mistrusted and I was angry that I was being made to prove my innocence even though there was nothing to indicate I had done anything wrong.

This seemed contrary to one of those constitutional rights I had always been told were unalienable. But to refuse the exam